

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Mo Gelber,

Plaintiff,

v.

5 Towns Jewish Times, Inc.,

Defendant.

Case No:

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Mo Gelber ("*Plaintiff*"), by and through his undersigned counsel, for his Complaint against Defendant 5 Towns Jewish Times, Inc. ("*Defendant*") states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement.
2. Plaintiff herein creates photographic images and owns the rights to these images which Plaintiff licenses for various uses including online and print publications.
3. Defendant owns and operates a website known as www.5tjt.com (the "*Website*").
4. Defendant, without permission or authorization from Plaintiff actively copied, stored, and/or displayed Plaintiff's Photograph on the Website and engaged in this misconduct knowingly and in violation of the United States copyright laws.

PARTIES

5. Plaintiff Mo Gelber is an individual who is a citizen of the State of New York and maintains a principal place of business in Kings County, New York.
6. Upon information and belief, Defendant 5 Towns Jewish Times, Inc., is a New

1 York corporation with a principal place of business at 445 Central Avenue, Suite 209,
2 Cedarhurst in Nassau County, New York and is liable and responsible to Plaintiff based on the
3 facts herein alleged.

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5 **JURISDICTION AND VENUE**

6 7. This Court has subject matter jurisdiction over the federal copyright
7 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

8 8. This Court has personal jurisdiction over 5 Towns Jewish Times, Inc. because it
9 maintains its principal place of business in New York.

10 9. Venue is proper under 28 U.S.C. §1391(a)(2) because 5 Towns Jewish Times,
11 Inc. does business in this Judicial District and/or because a substantial part of the events or
12 omissions giving rise to the claim occurred in this Judicial District.

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14 **FACTS COMMON TO ALL CLAIMS**

15 10. Plaintiff is a professional photographer by trade who is the legal and rightful
16 owners of photographs which Plaintiff licenses to online and print publications.

17 11. Plaintiff has invested significant time and money in building Plaintiff's
18 photograph portfolio.

19 12. Plaintiff has obtained active and valid copyright registrations from the United
20 States Copyright Office (the "*USCO*") which cover many of Plaintiff's photographs while many
21 others are the subject of pending copyright applications.

22 13. Plaintiff's photographs are original, creative works in which Plaintiff owns
23 protectable copyright interests.

24 14. Plaintiff notified Defendant, via physical mail and email, of its infringing
25 activities on June 9, 2022 to no avail.
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1 15. Plaintiff notified Defendant for the second time of its infringing activities on
2 July 26, 2022 to no avail.

3 16. Defendant's failure to respond to Plaintiff's multiple outreach attempts has
4 forced Plaintiff to seek judicial intervention to address Defendant's infringing activities.
5

6 17. 5 Towns Jewish Times, Inc. is the registered owner of the Website and is
7 responsible for its content.

8 18. 5 Towns Jewish Times, Inc. is the operator of the Website and is responsible for
9 its content.

10 19. The Website is a popular and lucrative commercial enterprise.

11 20. The Website is monetized in that it contains paid advertisements and, upon
12 information and belief, Defendant profits from these activities.

13 21. On April 5, 2018, Plaintiff authored a photograph of a Yaffed protest (the
14 "*Photograph*"). A copy of the Photograph is attached hereto as Exhibit 1.
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16 22. Plaintiff applied to the USCO to register the Photograph on or about July 31,
17 2018 under Application No. 1-6818722141.

18 23. The Photograph was registered by the USCO on July 31, 2018 under
19 Registration No. VA 2-114-400.
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21 24. On April 23, 2020, Plaintiff first observed the Photograph on the Website in a
22 story dated September 19, 2019. A copy of the screengrab of the Website including the
23 Photograph is attached hereto as Exhibit 2.

24 25. The Photograph was displayed at URL: <http://www.5tjt.com/to-the-editor-should-secular-education-in-religious-schools-be-funded-by-government/>.
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26 26. Without permission or authorization from Plaintiff, Defendant volitionally
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1 selected, copied, stored and/or displayed Plaintiff's copyright protected Photograph as is set
2 forth in Exhibit "1" on the Website.

3 27. Upon information and belief, the Photograph was copied, stored and displayed
4 without license or permission, thereby infringing on Plaintiff's copyrights (hereinafter the
5 "*Infringement*").
6

7 28. The Infringement includes a URL ("*Uniform Resource Locator*") for a fixed
8 tangible medium of expression that was sufficiently permanent or stable to permit it to be
9 communicated for a period of more than a transitory duration and therefore constitutes a specific
10 infringement.

11 29. The Infringement is an exact copy of the vast majority of Plaintiff's original
12 image that was directly copied and stored by Defendant on the Website.

13 30. Upon information and belief, Defendant takes an active and pervasive role in the
14 content posted on its Website, including, but not limited to copying, posting, selecting,
15 commenting on and/or displaying images including but not limited to Plaintiff's Photograph.
16

17 31. Upon information and belief, the Photograph was willfully and volitionally
18 posted to the Website by Defendant.

19 32. Upon information and belief, Defendant is not registered with the United States
20 Copyright Office pursuant to 17 U.S.C. §512.
21

22 33. On information and belief, the Infringement were not posted at the direction of
23 a "user" as that term is defined in 17 U.S.C. §512(c).

24 34. Upon information and belief, Defendant engaged in the Infringement knowingly
25 and in violation of applicable United States Copyright Laws.

26 35. Upon information and belief, Defendant has the legal right and ability to control
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1 and limit the infringing activities on its Website and exercised and/or had the right and ability
2 to exercise such right.

3 36. Upon information and belief, Defendant monitors the content on its Website.

4 37. Upon information and belief, Defendant has received a financial benefit directly
5 attributable to the Infringement.
6

7 38. Upon information and belief, the Infringement increased traffic to the Website
8 and, in turn, caused an increase in Defendant's advertising revenues.

9 39. Upon information and belief, a large number of people have viewed the unlawful
10 copies of the Photograph on the Website.

11 40. Upon information and belief, Defendant at all times had the ability to stop the
12 reproduction and display of Plaintiff's copyrighted material.

13 41. Defendant's use of the Photograph, if widespread, would harm Plaintiff's
14 potential market for the Photograph.
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16 42. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

17 **FIRST COUNT**

18 ***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

19 43. Plaintiff repeats and incorporates by reference the allegations contained in the
20 preceding paragraphs, as though set forth in full herein.

21 44. The Photograph is an original, creative work in which Plaintiff owns valid
22 copyright properly registered with the United States Copyright Office.

23 45. Plaintiff has not licensed Defendant the right to use the Photograph in any
24 manner, nor has Plaintiff assigned any of its exclusive rights in the copyrights to Defendant.
25

26 46. Without permission or authorization from Plaintiff and in willful violation of
27 Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, stored,
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1 reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff
2 thereby violating one of Plaintiff's exclusive rights in its copyrights.

3 47. Defendant's reproduction of the Photograph and display of the Photograph
4 constitutes willful copyright infringement. *Feist Publications, Inc. v. Rural Telephone Service*
5 *Co., Inc.*, 499 U.S. 340, 361 (1991).
6

7 48. Plaintiff is informed and believes and thereon alleges that the Defendant
8 willfully infringed upon Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S.
9 Code, in that they used, published, communicated, posted, publicized, and otherwise held out
10 to the public for commercial benefit, the original and unique Photograph of the Plaintiff without
11 Plaintiff's consent or authority, by using it in the infringing article on the Website.
12

13 49. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is
14 entitled to an award of actual damages and disgorgement of all of Defendant's profits
15 attributable to the infringement as provided by 17 U.S.C. § 504 in an amount to be proven or,
16 in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for
17 the infringement pursuant to 17 U.S.C. § 504(c).
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19 50. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court
20 in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and
21 costs pursuant to 17 U.S.C. § 505 from Defendant.

22 51. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is
23 entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17
24 U.S.C. § 502.

25 **JURY DEMAND**

26 52. Plaintiff hereby demands a trial of this action by jury.
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PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests judgment as follows:

That the Court enters a judgment finding that Defendant has infringed upon Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 et seq. and award damages and monetary relief as follows:

- a. finding that Defendant infringed upon Plaintiff's copyright interest in the Photograph by copying and displaying without a license or consent;
- b. for an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringement as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for the infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;
- c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any infringing use of any of Plaintiff's works;
- d. for costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505;
- e. for pre judgment interest as permitted by law; and
- f. for any other relief the Court deems just and proper.

DATED: November 01, 2022

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